switch, with updates as needed, and (2) all CLASS, Centrex and custom features and functions by end office switch upon MCI's request.

1. MCI's Arguments and BA-WV's Response.

a. MCI's Arguments.

MCI claims that it needs the SAG/FAM switch information[11] in the format and with the frequency requested in order to perform the pre-ordering process before a customer's order for local telephone service is placed. MCI Initial Br., at 17. MCI notes that BA-WV currently has all of the information about products, services and customers necessary to complete the pre-ordering process. Such information can be divided into two general categories: (1) time-critical information that is likely to change often and must be updated on a real-time basis; and (2) information that is not likely to change on such a frequent basis and therefore is not time-critical. Id., at 18. MCI notes that it has its own pre-ordering and ordering systems and that, in order to most efficiently serve its customers, it needs to be permitted to use its own systems as much as possible rather than relying on BA-WV's systems. While MCI must continue to rely on BA-WV's system when accessing time-critical information, such as available telephone numbers, much of the pre-ordering information MCI seeks is not time sensitive and it should not need to rely on BA-WV's systems for this information.

There are three reasons, MCI argues, why it is entitled to these databases. First, access to these databases will permit MCI to use its own systems which promotes competition. MCI Initial Br., at 19. MCI claims that the access currently offered by BA-WV requires it to continually return to the BA-WV pre-ordering system for information each time a customer calls rather than having the information available in the MCI system. This arrangement results in inefficiencies and time delays to consumers and makes MCI "captive" to BA-WV's system and hours of operation. Id. Second, Congress and the FCC endorse MCI's use of its own pre-ordering and ordering systems because such a result leads to parity. Noting that 47 U.S.C. §251(c)(3) requires BA-WV to provide nondiscriminatory access to all network elements, which include operations support systems (OSS), MCI argues that it will be unable to service a new customer in a way that is comparable to the service offered by BA-WV unless the information it seeks is available in the requested format. Id., at 19-20.

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[11]MCI did not identify what "FAM/SAG" means in its petition for arbitration. In its December 5, 1997 reply brief, however, MCI indicated that "SAG" meant "street address guide" and that "FAM" meant "feature availability matrix." MCI Reply Br., at 7. In its December 1, 1997 initial brief, MCI indicated that the SAG database would list street addresses with the service area of each BA-WV switch, with updates as needed. The FAM database would identify all CLASS, Centrex and custom features and functions, by end office switch, upon MCI's request. MCI Initial Br., at 17.

Third, MCI argues that BA-WV's Electronic Communications Gateway (ECG) does not provide for connectivity to MCI systems. MCI notes that its customer service representatives (CSRs) will have to go through many steps in order to enter customer information into its own system, and to verify such information exists in BA-WV's system -- many more steps than BA-WV's to handle and enter an order. Id., at 20. If the ECG interfaced directly with MCI's systems, or if the data was provided in a fashion which allowed MCI to enter it into its system initially, these steps would not be required and there would be closer parity between the incumbent and competitors. Furthermore, MCI claims that parity is not achieved when its access is different than BA-WV's access. BA-WV only has to enter information once and does not need to rely another carrier for its information. Moreover, BA-WV's CSRs are able to use their own systems. Last, requiring MCI to make use of the access offered by BA-WV imposes a tremendous technical disadvantage because it requires MCI to go through expensive, time-consuming and unnecessary steps to create a database of its own. Moreover, the concept of "screen scraping"-- essentially removing formatted information provided by BA-WV and converting it to data -- is not efficient because it requires MCI to spend unnecessary efforts and funds on a process which BA-WV does not even require. MCI Initial Br., at 21-22.

b. BA-WV's Response.

BA-WV argues that MCI's claim that it will be unable to service a new customer in a way comparable to the service offered by BA-WV -- unless it is provided with SAG/FAM databases -- is simply untrue. Even if it provides MCI with these databases, BA-WV contends, MCI would still need to access BA-WV's data systems in order to obtain time critical information. MCI will not be able to eliminate the "extra step" about which it complains or otherwise allow it to cease being "captive to BA-WV's system and hours of operation." BA-WV Reply Br., at 9, citing Albert Reb., at 7. Moreover, possession of this information would merely increase the opportunity for error, BA-WV argues, by creating a situation in which two carriers are working out of two different databases -- one current, the other not -- rather than a single database. Id., citing Albert Reb., at 8. Moreover, BA-WV argues that the "few seconds" required to enter customer information a second time would not be noticeable to the customer in any event. Id., citing Albert Reb. at 5. Finally, BA-WV claims that MCI may eliminate the need to enter customer information a second time by simply integrating its access to BA-WV's ECG into MCI's CSRs' terminals. BA-WV claims that this "screen scraping" technique is widely deployed throughout the industry and would only require MCI to make certain comparatively minor modifications to its representatives' terminals. Id., at 10, citing Albert Reb., at 5. Noting that MCI admits it could deploy the "screen scraping" technique, BA-WV argues that it should not be required to make the additional investment necessary to develop a new customized database allowing MCI to avoid using ECG, especially in light of the sunk investment BA-WV already has in the ECG. Id. & Fn.7.

In sum, MCI cites nothing in TA96 that requires BA-WV to construct the requested databases especially for MCI. BA-WV argues that its only obligation under TA96 is to provide MCI with reasonable, nondiscriminatory

access to its OSS and that it has met that obligation with the ECG.

2. BA-WV's Arguments and MCI's Response.

a. BA-WV's Arguments.

BA-WV argues that the Commission should not require it to provide MCI with two additional databases, the first identifying the features and functions -- by office -- in each of BA-WV's 128 end offices, and the second identifying the street coverage of each of those end offices. BA-WV Initial Br., at 7, citing Kudtarkar Reb., at 2. Contrary to Mr. Kudtarkar's claim that MCI only seeks "access" to this data, BA-WV claims that MCI wants the information provided initially via "data dump" into its system and thereafter updated as BA-WV makes changes in that information. MCI's position, BA-WV contends, is unreasonable on its face.

First, BA-WV claims that Mr. Kudtarkar errs in claiming that the SAG/FAM information already resides in each BA-WV switch. Rather, the information is contained in, and fully integrated into BA-WV's "Live Wire" and other operations support systems (OSS). Id., citing Albert Reb. at 2. Second, the SAG/FAM information is already available on a real-time basis through BA-WV's Electronic Communications Gateway (ECG). BA-WV Initial Br., at 7-8 & Fn. 7. BA-WV notes that twenty-five (25) carriers use the ECG -- including AT&T, Sprint, LCI and MCI, that ECG been functioning since 1994, and that the system was developed with MCI. Id. at 7. Thus, it is unreasonable to require BA-WV to create 2 new databases.

Third, although MCI claims it only wants information that is not time-critical, most of the information MCI seeks is, in fact, time-critical and changes frequently. If MCI sent service orders to BA-WV containing out-dated information, those orders would fall out to error resulting in costly, manual intervention by BA-WV personnel. BA-WV Initial Br., at 8-9, citing Albert Reb., at 7. Fourth, MCI would have to continue using BA-WV's database, even if the Company provides the sought-after information via data dump, since MCI will still need to access BA-WV's data systems in order to obtain admittedly time critical data. Id., at 9. Fifth, BA-WV claims that providing the information MCI seeks would result in the Company's being left with "stranded" costs to develop the ECG since MCI and other cost-causers would not make use of the ECG system they asked BA-WV to develop. Id., at 10. Finally, BA-WV argues that development of the databases MCI wants would divert BA-WV personnel from working on other, "truly important" development projects that benefit all CLECs, such as developing an information system that allows for permanent number portability. Id., citing Albert Reb., at 9.

BA-WV urges the Commission to join with the other two state commissions -- Virginia and Pennsylvania -- that have considered and rejected MCI's request. Id. at 11, citing Docket No. PUC960113 (Va. S.C.C., May 8, 1997), at 5-6; Order and Opinion, Docket No. A-310236F0002 (Pa. P.U.C., Dec. 19, 1996), at 66.

b. MCI's Response.

MCI claims that BA-WV is wrong when it states that MCI wants BA-WV to create two new databases. As with DA information, MCI claims that it only seeks a copy of the existing underlying information that is available to BA-WV in an electronic format. MCI Reply Br., at 8. Second, MCI claims that the fact that SAG/FAM information is contained in and fully integrated into BA-WV's "Live Wire" and other OSS systems is not adequate because such information is available only through a "per dip" charge and that if MCI had its own database, it could review the data without accessing the BA-WV's system each time such data was required. MCI could then serve local customers more quickly and less expensively since it would need to access BA-WV's "Live Wire" database only as a needed basis. Id.

In addition, MCI claims that BA-WV's argument that it created the "Live Wire" system for MCI is somewhat disingenuous. MCI notes that OSS systems are constructed by BA-WV in order to meet the FCC-prescribed competitive checklist as a prerequisite to entering the long distance market. More importantly, MCI claims, if BA-WV constructed the system for MCI, then it should have consulted MCI regarding what type of system would have best met MCI's needs rather than the current system which, MCI claims, is awkward and does not satisfy its needs.

With respect to BA-WV's argument that much of the data MCI requests is "time-critical," MCI applauds BA-WV's concern with frequent changes to such information and "invites BA-WV to electronically transmit changes as often as it updates it own information." Id., at 9. This, MCI claims, would allow both companies to avoid costly manual intervention to correct errors before an order is processed. Moreover, MCI claims that the features available in a switch generally do not change on a daily basis and that BA-WV's claim simply is not accurate in this respect. Finally, if BA-WV had designed a system-to-system interface, MCI and other CLECs would not need to request databases. BA-WV, MCI claims, designed a system where others have limited access and seeks to impose inefficient costs on CLECs.

MCI further argues that if BA-WV had listened to its request for SAG/FAM information in the first instance, it would not have developed the "Live Wire" system. Finally, MCI claims that BA-WV's assertion that its personnel are currently dedicated to developing an information system or permanent number portability and that creation of the SAG/FAM databases would be an imprudent and wholly unjustified use of the Company's limited resources, is troubling since the Maryland commission has already ordered BA-WV to provide the same requested information. Id., at 10 (no citation).

3. Staff's Position.

Staff's witness testified that MCI's witness makes a "compelling argument" and therefore recommends that BA-WV should be required to download SAG/FAM information contained in BA-WV's switches which MCI can use to achieve "pre-ordering" parity with BA-WV. Walker Reb., at 4. However, Staff suggests that the Commission should require MCI to pay BA-WV all reasonable incremental costs caused by activity related to the provision of

the data, and BA-WV should be given reasonable time to comply with MCI's request. Staff recommends that the parties work out the compliance schedule and that the Commission get involved only if the parties fail to quickly resolve the matter. Id.

4. Commission Decision and Rationale.

The Commission concludes that MCI's request for SAG/FAM data to be downloaded to it, in electronic format, and updated as frequently as it is modified by BA-WV, is not unreasonable and should be granted.

The data MCI seeks should properly be considered a network element to which MCI is entitled to have access, if technically feasible. See 47 U.S.C. §§153(29) & 251(c)(3); FCC Interconnection Order, ¶262. It is the ILEC's burden to prove that a particular access point is not technically feasible. FCC Interconnection Order, ¶198. BA-WV has argued primarily about the cost and effort necessary to provide MCI with the requested database rather than network reliability problems associated with providing the data. Moreover, BA-WV has not voiced the same concerns regarding sharing proprietary information with MCI that it voiced with respect to downloading its DA database. The FCC previously concluded that TA96 bars consideration of cost when considering whether access to a network element is feasible. FCC Interconnection Order, ¶199. Moreover, the FCC concluded that "the obligations imposed by [47 U.S.C. §251(c)(3)] include modifications to incumbent LEC facilities to the extent necessary to accommodate . . . access to network elements," and that "access to a LEC network element may be feasible . . . even if such . . . access requires a novel use of, or some modification to, incumbent LEC equipment." Id., ¶¶198 & 202. Thus, the fact that BA-WV may have to exert some effort to develop, download and update the SAG/FAM databases requested by MCI does not make the provision of such data technically infeasible. Therefore, the Commission concludes that it is technically feasible for BA-WV to provide MCI with the SAG/FAM information requested.

While both parties' arguments have merit, it is the Commission's opinion that the underlying goal of TA96 -- encouraging competition for local service -- would be better served by requiring BA-WV to honor MCI's request. Furthermore, the Commission agrees with MCI that the features that are available by switch should not be subject to much, if any change, and that MCI is not likely to be working from a second, out-of-date database with respect to this information. Likewise, the Commission is unconvinced that street addresses served by a particular switch are likely to change frequently or often. Both databases may prove helpful to MCI's CSRs handling requests for service from potential customers.

However, the Commission agrees with Staff that MCI should be required to compensate BA-WV for the information being provided. As the FCC pointed out, "a requesting carrier that wishes [access to] a 'technically feasible' but expensive [network element] would, pursuant to section 252(d)(1), be required to bear the cost of that [access], including a reasonable profit." FCC Interconnection Order, ¶199. The Commission therefore directs BA-WV to undertake a study to determine, on a TELRIC basis, its cost to provide and

update the SAG/FAM data MCI requests and to provide MCI with a proposal based on that study. MCI may then decide whether it wishes to incur the cost necessary to obtain access to the SAG/FAM data. The Commission directs the parties either to negotiate a cost-study procedure or they may utilize the bona fide request procedure set forth in BA-WV's proposed SGAT, as modified in response to the Commission's May 16, 1997 order. 5/16 Order, at 24-26.

D. Compensation for Internet-Bound Traffic.

1. MCI's Arguments and BA-WV's Response.

a. MCI's Arguments.

MCI claims that traffic originating in a local calling area and which is terminated within that area to Internet Service Providers (ISPs) should be considered "local" for purposes reciprocal compensation. MCI believes that such traffic is local because it is both originated and terminated within the local calling area and, as such, the compensation paid to the carrier of such traffic should be determined using local call termination rates rather than the termination rates for interexchange traffic, with its associated access fees. MCI Initial Br., at 22. MCI argues that determining whether ISP traffic is local or not should be based on determining whether, in fact, a call originating from within a local calling area is being "terminated" or handed off by one LEC to another LEC within the same local calling area. Id., at 23. In such situations, MCI argues, the only reasonable conclusion is that ISP traffic is "local" and should be treated as such for purposes of determining the level for reciprocal compensation for call termination.

Moreover, ISP traffic has always been considered by the FCC as local traffic for certain regulatory purposes. Id., at 26, citing MTS WATS Market Structure, 97 FCC2d 682 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 (1988). Furthermore, the FCC recently reaffirmed that ISP calls should not be treated as interexchange access traffic and that ISPs should be considered end-users for purposes of the access charge regime. Id., citing "First Report and Order," In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (Rel. May 16, 1997), ¶314[12] (FCC ACR Order). The FCC's maintenance of the existing pricing structure for ISPs as end users, MCI argues, confirms that ISP calls should continue to be treated as local calls.[13]

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[12]MCI erroneously cited ¶344 of the FCC ACR Order as the source of the FCC's conclusion on this point.

[13]MCI asserts that, by maintaining the existing pricing structure for ISPs, the FCC has effectively ruled that ISPs continue to be treated as end users purchasing local exchange service. MCI Initial Br., at 26, citing Comments of AT&T Corp., CCB/CPD 97-90 [sic], at 2-4 (filed July 17, 1997).

b. BA-WV's Response.

BA-WV claims the MCI's argument that "ISP traffic is local. . . because it is both originated and terminated within the local calling area" is wrong as a matter of law, and is flatly inconsistent with the jurisdictional position MCI has taken before the FCC. BA-WV Reply Br., at 13. BA-WV further argues that MCI's argument is unsound as a matter of public policy.

BA-WV notes that MCI, and its trade association -- ALTS -- have brought the very same Internet traffic issue to the FCC "precisely because" Internet traffic is interstate in nature, pointing out in their filing that "this clarification is plainly within the [FCC's] exclusive jurisdiction." Id. (no citation). BA-WV points out that MCI urged the FCC to issue a ruling as quickly as possible to preclude the confusion that inconsistent state actions could produce. The Company notes that the FCC has issued a public notice and that comments and reply comments to the Internet traffic proceeding were filed on July 17 and 31, 1997, respectively. The issue, BA-WV contends, is now ripe for decision by the FCC. MCI, BA-WV argues, fails to explain why the Internet traffic is no longer a matter within in the FCC's exclusive jurisdiction, nor why the inevitable inconsistent state decisions would no longer be confusing. Id., at 14. BA-WV asserts that the jurisdictional position taken by MCI before the FCC is the correct position, that Internet traffic is overwhelmingly interexchange in nature, and that the reciprocal compensation issues surrounding it should be resolved at the federal level.

With respect to MCI's argument that the FCC recently affirmed that ISP calls should not be treated as interexchange access traffic and that ISPs should be considered end users for purposes of access charges, BA-WV asserts that the fact the FCC has chosen to exempt Internet traffic from regular interexchange access charges does not change the underlying interstate character of the traffic or the FCC's continuing jurisdiction over such traffic. Id. BA-WV contends that the jurisdictional nature of the traffic is dictated not by the physical location of the communications facilities that carry the traffic but by the type of traffic that flows over those facilities. If MCI had not believed the FCC had exclusive jurisdiction over such traffic, then it would not have asked the FCC to resolve the issue. BA-WV Reply Br., at 14, citing In the Matter of Association for Local Telecommunications Request for Expedited Letter Clarification Inclusion of Local Calls to ISPs Within Reciprocal Compensation Arrangements, File No. CCB/CPD 97-30 (various comments omitted).

BA-WV also claims that MCI mischaracterizes BA-WV's position on this issue. Contrary to MCI's assertions, BA-WV claims that it is not proposing that the local termination rate for such traffic should be "the termination rate for long-distance traffic and its associated access fees," nor is BA-WV proposing "charges that would be so prohibitive that West Virginians would be the only part of the world denied access to the worldwide web." Id., at 15. BA-WV does not believe compensation should be permanently unavailable for Internet traffic and for that reason has proposed that Internet traffic be subject to modified access charges sufficient to cover the costs

incurred in carrying and terminating such traffic in the FCC's notice of inquiry regarding policies relating to Internet traffic and compensation. See "Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry," In the Matter of Access Charge Reform, et al., CC Docket No. 96-262, et al., FCC 96-488 (Rel. Dec. 24, 1996)(Internet NOI). MCI, the Company argues, is well-aware of Bell Atlantic's position in that proceeding.

In addition, BA-WV sets out several public policy reasons why Internet access traffic should not be subjected to reciprocal compensation. The Company claims that, in many instances, the amount of reciprocal compensation an originating carrier would have to pay a carrier providing terminating service to an ISP would represent an substantial percentage of, if not actually exceed, the monthly rate that the originating carrier receives from its end-user customer. Id., at 15-16 & Fn. 10. BA-WV claims that such an arrangement would provide a windfall to terminating carriers at the originating carrier's expense. Moreover, BA-WV points out that the Internet traffic issue was not truly considered in either the FCC's interconnection proceedings or in the Commission's SGAT proceeding. Since the FCC now has before it a proceeding aimed at giving the Internet traffic issue full and thorough attention, and since MCI and Bell Atlantic, as well as all the LECs, CLECs, exchange service providers, ISPs and others who have an interest in the outcome of the FCC's inquiry--are parties to that proceeding, the Commission should allow the issue to be decided in that forum. Id., at 16-17.

2. BA-WV's Arguments and MCI's Response.

a. BA-WV's Arguments.

BA-WV takes exception to MCI's claim that it makes a "compelling factual argument" for breaking the end-user's call into two-legs for Internet-bound traffic -- a local leg from the end-user to the ISP, and an interstate leg from the ISP across the Internet to the world. BA-WV Initial Br., at 13. BA-WV asserts that nowhere does MCI or its witness explain why its argument is so "factually compelling" or why its proposal is consistent with the end-to-end analysis that regulators have traditionally employed. Id., citing Given Reb. at 1.

While it is good policy for a party to seek compensation for the costs it incurs, BA-WV contends that it is not good policy to pretend that an interexchange Internet call is "local" when it is not, simply to take advantage of an existing local traffic compensation arrangement. The issue is far more complicated and deserves a more closely-fitting solution. BA-WV Initial Br., at 13. Moreover, BA-WV notes that the Internet traffic issue is pending before the FCC, at the urging of MCI and others. BA-WV suggests that the Commission should defer to the federal agency, noting that none of the CLECs have begun operating in the State yet and that there is time to allow the FCC to resolve the issue before it becomes a practical consideration. Id., at 13-14. Last, BA-WV notes that appropriate compensation for Internet-bound traffic should not be permanently unavailable and that it has proposed, in response to the FCC's Internet NOI,

that such traffic should be subject to modified access charges sufficient to cover the costs incurred in carrying and terminating such traffic. Id., at 14. BA-WV contends that this proposal, or any other compensation mechanism established by the FCC, should fully address MCI's concerns.

b. MCI's Response.

MCI claims that "[a]lthough BA-WV is at a loss to explain Internet telephony, it is not a mystery to the Commissioners in Virginia, nor apparently to the [Staff]." MCI Reply Br., at 14. MCI points out that Staff concurs with it on this issue and that ". . . except when the user-to-ISP call is a toll call, termination of traffic to ISPs should be treated as local for purposes of determining reciprocal compensation." Id., at 14-15, citing Walker Reb., at 4. MCI urges the Commission not to be misled by BA-WV's attempt to pigeon-hole regulators with out-dated means of analyzing the communications super-highway and asserts that BA-WV's insistence on using an end-to-end analysis is the reason it cannot grapple with the concepts involved in Internet telephony. MCI claims that it is BA-WV's attempt to use a traditional end-to-end measure to describe an Internet call which is "contrived," and that BA-WV's "single call" explanation fails to neatly describe Internet calling patterns. Id., at 15. MCI notes that it agrees with BA-WV's witness that the Internet issue is far more complicated than BA-WV's "single call" explanation and deserves a better fitting solution. MCI claims that it and Staff agree on just such a solution and that it remains for the Commission to implement it, just as Virginia has done. Id.; see Kudtarkar Dir., Attachment 1 ("Final Order," Petition of Cox Virginia Telcom, Inc., Case No. PUC970069 (Va. S.C.C., Oct. 24, 1997)).

With respect to BA-WV's request that the Commission defer ruling on the issue in favor of the FCC, MCI claims that this argument is another legal ruse to prevent a ruling which BA-WV fears will be favorable to the CLECs. Id., at 16. MCI believes it would a mistake for the Commission not to assert jurisdiction and rule in a manner that signals that West Virginia "invites the benefits competition can bring."

3. Staff's Position.

Staff disagrees with BA-WV's position and supports MCI's position on this issue. Walker Reb., at 3. Staff testifies that the proper way to characterize a call to an ISP is as one leg of a three-way conference call, rather than as a single non-local call. The three parties to the call are (1) the user, (2) the ISP's local node, and (3) the point on the Internet reached by the user. In Staff's three way conference call example, Party 1 makes a local call to Party 2 in Charleston. Party 2 then calls in a third person, Party 3, in Huntington and conferences the three parties together. In its example, Party 1 would be billed for a local call, while Party 2 is billed for the call to Huntington. Party 1 is not billed for a call to Huntington. Walker Reb., at 3-4.

4. Commission Decision and Rationale.

The Commission concludes that MCI makes the better argument that

Internet-bound traffic that originates, and is terminated to an ISP within a local calling area, should be considered "local traffic" for purposes of reciprocal compensation.

The courts have ruled, as ALTS claimed in its request for clarification, that enhanced services -- such as Internet service -- are within the FCC's exclusive jurisdiction. Computer & Communications Industry Association v. FCC, 698 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983). Moreover, ALTS urged the FCC to issue a clarification of its interconnection order promptly to "preclude the jurisdictional confusion that inconsistent state actions could produce." ALTS Request for Expedited Letter Clarification, at 2 (June 20, 1997). The FCC sought comments regarding ALTS's request for clarification and established deadlines of July 17, 1997 and July 31, 1997 for initial comments and replies, respectively. See "Order," In the Matter of Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 (Rel. July 22, 1997). With respect to the Internet NOI, the FCC seeks comment on whether it should, in addition to access charge reform, consider actions relating to the implications of information service and Internet access provider usage of the public switched network, in part directed at allowing more efficient transport of data traffic to and from end users. Initial comments were due March 24, 1997 and reply comments were due April 23, 1997. To-date, the Commission is unaware of a final ruling by the FCC in either proceeding.

Although the Commission agrees that a final determination on this matter rests with the FCC, it is clear that, historically, calls that originate and are terminated to ISPs in local calling areas are treated as local traffic -- regardless of whether the ISP reformats or retransmits information received over such calls to or from further interstate (or international) destinations. ALTS Request, at 2, citing MTS and WATS Market Structure, 97 FCC2d 682, 715 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988). Since 1983, the FCC apparently has treated such calls as local for purposes of end user tariffs, for separations, and for interconnection agreements among LECs. ALTS Request, at 2-3. Moreover, ALTS claimed that nothing in the FCC's lengthy discussion regarding the scope of the interconnection obligations relating to local and interexchange traffic announced any change in the FCC's rule that calls to ISPs from within a local calling area must be treated as local calls by LECs. Id., at 3, citing FCC Interconnection Order, ¶¶356-65; 716-32; 1033-38. In addition, the FCC repeated the long history of its requirement that calls to ISPs from within local calling areas are treated as local calls, regardless of the ISP's subsequent handling of the call, and requested comments regarding whether this policy should be reconsidered. Id., citing Internet NOI, ¶¶282-90.

Regardless of the merit -- or lack thereof -- in BA-WV's argument that traffic to ISPs should be considered to consist of a "local" component and an "interexchange" component, the Commission concludes that the FCC has previously addressed the issue in a manner favorable to MCI's position. The fact that the FCC may be reconsidering -- and conceivably may abandon --

its policy that ISP calls originating within local calling areas should be considered local traffic, does not alter the fact that this is the policy currently in effect.

If the FCC should change its position, then the Commission expects interconnection agreements to be applied in accordance with the FCC's new policy. Moreover, the parties will be directed to bring the FCC's final determination to the Commission's attention in order to allow it to consider whether any further action is appropriate. Finally, the Commission notes that it may be some time before MCI begins providing local service since it has not yet received a certificate of necessity to provide such service, though its application is pending. See MCImetro Access Transmission Service, Inc., 97-1412-T-CN (filed Oct. 17, 1997). A change in the FCC's policy regarding Internet traffic therefore may occur before the issue of compensating LECs for transport and termination of Internet-bound traffic becomes pertinent.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW[14]

I. Regulatory and Procedural Background.

F1. On September 19, 1997, MCI Telecommunications Corporation (MCI), filed a petition requesting Commission arbitration, pursuant to §252(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§151 et seq. (TA96), of open issues from MCI's negotiations with Bell Atlantic - West Virginia, Inc. (BA-WV) for an agreement dealing with, among other things, interconnection and access to unbundled network elements (UNEs).

F2. MCI requested BA-WV to negotiate an interconnection agreement with it on April 14, 1997. MCI Petition, at 5.

F3. As clarified by letter filed with the Commission on September 24, 1997, MCI requested that the following four (4) issues would need to be arbitrated by the Commission:

(1) MCImetro Access Transmission, Inc.'s access to BA-WV's Directory Assistance (DA) data base.

(2) BA-WV's provision of certain information needed by switch ("FAM/SAG").

(3) Whether Internet-bound traffic is local traffic for purposes of compensation.

(4) Location of interconnection points.

[14]Unlike most of its orders, the Commission is organizing its Findings of Fact and Conclusions of Law together. Findings are identified as "F1" through "Fn," while conclusions are identified as "C1" through "Cn."

F4. The Commission adopts and incorporates, as if fully restated herein, its discussion of the regulatory and procedural background of this proceeding set forth in its November 4, 1997 order modifying the procedural schedule in this proceeding and denying AT&T Communications of West Virginia, Inc.'s petition to intervene.

F5. On October 31, 1997, BA-WV and MCI filed pre-hearing direct testimony with the Commission. BA-WV filed the direct testimony of Donald E. Albert and Gale Y. Given. MCI filed the direct testimony of Chet Kudtarkar and Stuart H. Miller. The other parties did not file pre-hearing direct testimony. Likewise on October 31, 1997, AT&T filed its response in opposition to BA-WV's motion to deny it intervenor status.

F6. On November 7, 1997, BA-WV, MCI and Staff filed pre-hearing rebuttal testimony. BA-WV and MCI's rebuttal testimony was provided by the same individuals who provided direct testimony. Staff filed the rebuttal testimony of Dannie L. Walker.

F7. On November 12, 1997, MCI filed its response in opposition to BA-WV's motion to dismiss its petition for arbitration.

F8. On December 1, 1997, both BA-WV and MCI filed initial briefs. Staff did not file an initial brief.

F9. On December 7, 1997, both BA-WV and MCI filed reply briefs. Staff did not file a reply brief.

C1. Section 252(b)(4) of TA96 provides that decisions on petitions for arbitration must be rendered within nine (9) months after the initial request for negotiation of an interconnection agreement. 47 U.S.C. §252(b)(4).

C2. The Commission's decision resolving the issues submitted for arbitration must be rendered by January 13, 1998.

II. <u>BA-WV's Motion to Dismiss</u>.

F10. The Commission has not ruled upon BA-WV's motion to dismiss MCI's petition for arbitration to-date.

F11. BA-WV requests that the Commission dismiss MCI's petition on the three (3) issues which the Company previously claimed, in its response, were not sufficiently identified in MCI's petition (<u>i.e.</u>, DA data base, switch information and IP location). As grounds for its motion, BA-WV argued that MCI's petition failed to meet the pleading requirements of TA96 and therefore failed to state a claim upon which relief could be granted under TA96 and W. Va. R. Civ. P. Rules 12(b)(6) and 12(c).

F12. MCI contends that its petition set forth the issues before the Commission in sufficient detail and that BA-WV's stalling tactics in signing

off on the regional template for an interconnection agreement forced MCI to file a petition identifying many more issues than it believed would (or should) need to be arbitrated. MCI Opposition, at 2.

C3. The Commission must rule upon BA-WV's motion to dismiss MCI's petition for arbitration before addressing the merits of the issues submitted for arbitration.

C4. BA-WV's motion to dismiss MCI's petition for arbitration should be denied.

C5. Arbitrations are generally considered less formal proceedings than contested cases or judicial proceedings. Wheeling Gas Co. v. Wheeling, 8 W.Va. 320 (1875); see also 2A Michie's Jur., Arbitration and Award, §11 at 41 (1993); 4 Am. Jur.2d, Alternative Dispute Resolution, §180 at 207 (1995). Accordingly, the Commission should be less strict in applying pleading standards in arbitration proceedings.

C6. While the Commission has decided matters in accordance with the State's rules of civil procedure, courts generally will construe complaints liberally with respect to motions seeking dismissal for failure to state a claim under W. Va. R. Civ. P. 12. Doe v. Wal-Mart Stores, 479 S.E.2d 610, Syl. Pt. 1 (W. Va. 1996); Garrison v. Herbert J. Thomas Memorial Hospital, 438 S.E.2d 6, Syl. Pt. 2 (W. Va. 1993). Liberal construction of MCI's petition seems especially applicable since dismissal would effectively bar refiling of the petition since the statutory limitations period -- i.e., 135 to 160-days following request for negotiation -- has expired.

C7. MCI's petition is not so bereft of detail regarding the nature of the issues submitted for arbitration that it should be dismissed for failure to state a claim.

III. Unresolved Issues Submitted for Commission Arbitration.

A. Location of Interconnection Points.

F13. The parties' agreement defines "interconnection point" and "point of interconnection."

F14. An interconnection point (IP) means the switching, Wire Center, or other similar network node in a party's network at which that party accepts local traffic from the other party. Put another way, the IP is the "first switch on the other side of each party's network," where the other party can first measure the traffic coming from the other carrier's network, on a usage basis. Kudtarkar Dir., at 13 Fn. 17.

F15. BA-WV's IPs include (1) any BA-WV end office for the delivery of traffic terminated to numbers served out of that end office, or (2) any access tandem office for the delivery of traffic to numbers served out of any end office that subtends the access tandem office. MCI Initial Br., at 4.

F16. MCI's IPs include any MCI switch for the delivery of traffic terminated to numbers served out of that switch.

F17. Points of interconnection or POIs are the physical connections between the parties' networks at the IP, and mark the boundaries of each company's network.

F18. The parties' agreement defines POI as the "physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between the parties for the local interconnection of their networks." Each company is responsible for network engineering and maintenance on its side of the POI. MCI Initial Br., at 4.

F19. MCI's position can be summarized as consisting of the following three proposals: (1) MCI will designate at least 1 POI at any technically feasible point in each LATA in which it originates local traffic and interconnects with BA-WV; (2) MCI may request additional POIs at any other technically feasible points it chooses; and (3) MCI is willing to establish at least 1 IP in each ATSA for termination of local traffic to BA-WV's local traffic to MCI's local customers. BA-WV Initial Br., at 11, citing Kudtarkar Dir., at 13.

F20. MCI wants to limit the number of POIs it must establish to "at least one [1] POI in each of the LATAs in which [MCI] originates local traffic and interconnects with [BA-WV]." MCI Initial Br., at 3 (emphasis added).

F21. BA-WV wants MCI to establish "at least one [1] POI in each of the [BA-WV] access tandem serving areas in which [MCI] originates local traffic and interconnects with [BA-WV]." Id. (emphasis added). BA-WV clarifies that MCI should establish such an interconnection point in each ATSA once MCI begins serving customers in that particular ATSA.

F22. Staff agrees with BA-WV's position. Walker Reb. at 5.

C8. MCI makes the better case for its position and the Commission directs the parties to use MCI's proposed interconnection agreement language.

C9. The FCC appears to have considered the arguments raised by MCI in this proceeding and to have resolved those arguments in MCI's favor. See "First Report and Order," In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996), ¶¶214, 220 & Fn. 464 (FCC Interconnection Order).

C10. Requiring CLECs, such as MCI, to invest in more infrastructure than they wish could constitute a barrier to market entry in violation of 47 U.S.C. §253(a), since it could make it financially and operationally more burdensome for CLECs to begin operating in West Virginia.

C11. The Commission has already expressed its reluctance to approve artificial pricing structures designed to compel new entrants to make infrastructure investment decisions that would not otherwise be cost-efficient. See "Commission Order," In Re: Bell Atlantic - West Virginia, Inc., et al., Case No. 96-1516-T-PC, et al. (April 21, 1997), at 75-76 (Public Version)(4/21 Order). The same rationale applies to BA-WV's arguments in this proceeding.

C12. If MCI establishes only one POI in each LATA -- which is the point on its network at which it accepts local traffic from BA-WV -- then MCI must be prepared to pay BA-WV for local traffic transported by BA-WV from MCI's IP (BA-WV's access tandem) to MCI's POI (MCI's switch). See 47 C.F.R. §§51.701-.702; see also FCC Interconnection Order, ¶¶1039-40.

C13. The Commission will clarify one point in its 4/21 Order and 5/16 Order -- namely the rate BA-WV must pay MCI for terminating local traffic it delivers to MCI's network.

C14. The FCC defined "termination" as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. §51.701(d) (emphasis added). Where only 1 POI is established per LATA, that facility -- practically and legally -- is the equivalent of an end office switch.

C15. In a situation in which a CLEC maintains only 1 POI per LATA, it may charge only the lower, "end office" rate for termination of local traffic delivered to that POI. See BA-WV SGAT, Exhibit A (Revised Feb. 10, 1997).

B. Access to BA-WV's Directory Assistance Database.

F23. MCI contends that read-only access is not sufficient under the FCC's rules or TA96. MCI Initial Br., at 10-11 citing "Second Report and Order," In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., CC Docket Nos. 96-98, et al., FCC 96-333 (Rel. Aug. 8, 1996), ¶140 (FCC DP Order).

F24. BA-WV proposes that the Commission should limit access to its DA database to that required by the Commission's prior order rejecting BA-WV's proposed SGAT. See "Commission Order," In Re: Bell Atlantic - West Virginia, Inc., et al. Case No. 96-1516-T-PC, et al. (May 16, 1997)(5/16 Order). That order approved the Company's proposal that CLECs would be provided with access to BA-WV's DA database on a "per query" basis, but also directed BA-WV to modify its SGAT to provide CLECs with a complete directory listing in electronic, read-only format and with daily updates of additional customers, deleted customers and other modifications to the existing customer database. 5/16 Order, at 43.

F25. The DA database is the interactive, real-time database that allows for queries by DA operators to provide telephone numbers to customers who call either 4-1-1 or 555-1212. In contrast, the directory

listings database is the print white pages database that is used in typesetting a printed telephone directory. BA-WV Reply Br., at 2.

F26. With respect to the DA database, the FCC concluded that "a highly effective way to accomplish non-discriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access." FCC DP Order, ¶140; see also FCC Interconnection Order, ¶538.

F27. The FCC's decision concerning the obligation to provide access to directory listings databases is quite different. With respect to this database, the FCC concluded that ". . . Section 251(b)(3) requires LECs to share subscriber listing information in 'readily accessible' tape or electronic format. . . ."FCC DP Order, ¶141.

F28. The Commission's May 16, 1997 order rejected the argument that the CLECs should be provided with BA-WV's entire DA database, after noting that this database contains numerous proprietary functions and features which go beyond providing CLECs with access to its DA database. 5/16 Order, at 43.

F29. Staff recommends that the Commission should order BA-WV to timely provide the DA database access which MCI requests, and should require MCI to reciprocate fully by providing BA-WV with similar access to its DA database. Each carrier would have to pay the reasonable incremental costs of providing such access. Walker Reb., at 5-6.

C16. MCI's request for a "data dump" download of BA-WV's DA database, with electronic updates thereof should be denied. MCI's arguments are based on a "blurring" of two different FCC orders -- one dealing with dialing parity under 47 U.S.C. §251(b)(3), the other dealing with access to network elements under 47 U.S.C. §251(c)(3).

C17. The Commission's May 16, 1997 order regarding access to BA-WV's DA database is not irrelevant -- it is Commission precedent.

C18. MCI will need to show that the Commission's prior decision regarding access to BA-WV's DA database was unreasonable or erroneous. MCI fails to make such a showing.

C19. The FCC interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" in 47 U.S.C. §251(b)(3) to mean:

> . . . that the customers of all telecommunications service providers should be able to access each LEC's [DA] service and obtain a directory listing on a nondiscriminatory basis, notwithstanding (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.

CC DP Order, ¶¶127,130. This obligation applies to all LECs -- not just ILECs.

C20. In promulgating its dialing parity rules, the FCC concluded:

> . . . that [47 U.S.C. §251(b)(3)] requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems.

Id., ¶138 (emphasis added). The FCC's conclusion makes it clear that only subscriber listing information -- not all DA data -- must be provided in readily accessible tape or electronic format.

C21. The FCC's reference in ¶140 of the FCC DP Order to the "more robust access to databases" required by 47 U.S.C. §251(c)(3) must be construed in light of the FCC's discussion, in its interconnection order, of access to UNEs generally, and operator services and directory assistance in particular.

C22. In addressing what "access" to an UNE requires generally, the FCC wrote:

> We further conclude that "access" to an unbundled element refers to the means by which requesting carriers obtain an element's functionality in order to provide a telecommunications service. . . . We conclude, based on the terms of sections 251(c)(2), 251(c)(3) and 251(c)(6) that an incumbent LEC's duty to provide "access" constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection (c)(2).

FCC Interconnection Order, ¶269 (emphasis added). BA-WV satisfies its duty under 47 U.S.C. §251(c)(3) when it provides, on a nondiscriminatory basis, a connection to its DA database which allows MCI and other competitors to "dip into" its DA database for purposes of query and response.

C23. With respect to access to operator services and directory assistance in particular, the FCC wrote:

> . . . incumbent LECs must provide access to databases as unbundled network elements. . . . In particular, the directory assistance database must be unbundled for access by requesting carriers. Such access must include both entry of the requesting carrier's information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information. We clarify, however, that the entry of

> a competitor's customer information into an incumbent LEC's directory assistance database can be mediated by the incumbent LEC to prevent unauthorized use of the database. We find that the arrangement ordered by the California Commission concerning the shared use of such a database by Pacific Bell and GTE is one possible method of providing such access.

FCC Interconnection Order, ¶538 (emphasis added).

C24. All that "more robust access" to BA-WV's DA database requires is that, in addition to being provided a connection to BA-WV's DA database: (1) MCI can enter its customer information into BA-WV's DA database; and (2) MCI is able to read such a database in order to provide operator services and directory assistance concerning BA-WV's customer information. "More robust access" does not require BA-WV to provide, via "data dump," that database to MCI. The access BA-WV was required to provide in the Commission's May 16, 1997 order satisfies these requirements.

C. Information Needed by Switch.

F30. MCI requests that BA-WV be ordered to provide MCI with SAG/FAM switch information in the format, and with the frequency requested, in order to perform the pre-ordering process before a customer's order for local telephone service is placed.

F31. "SAG" information means "street address guide" and "FAM" means "feature availability matrix." MCI Reply Br., at 7.

F32. The SAG database would list street addresses with the service area of each BA-WV switch, with updates as needed. The FAM database would identify all CLASS, Centrex and custom features and functions, by end office switch, upon MCI's request. MCI Initial Br., at 17.

F33. Pre-ordering information can be divided into two general categories: (1) time-critical information that is likely to change often and must be updated on a real-time basis; and (2) information that is not likely to change on such a frequent basis and therefore is not time-critical. Id., at 18.

F34. BA-WV requests that the Commission deny MCI's request for SAG/FAM information.

F35. SAG/FAM information is contained in, and fully integrated into BA-WV's "Live Wire" and other operations support systems (OSS). BA-WV Initial Br., citing Albert Reb. at 2.

F36. SAG/FAM information is available on a real-time basis through BA-WV's Electronic Communications Gateway (ECG). BA-WV Initial Br., at 7-8 & Fn. 7.

F37. Staff recommends that BA-WV should be required to download SAG/FAM information contained in BA-WV's switches which MCI can use to

achieve "pre-ordering" parity with BA-WV. Walker Reb., at 4. However, Staff suggests that the Commission should require MCI to pay BA-WV all reasonable incremental costs caused by activity related to the provision of the data, and BA-WV should be given reasonable time to comply with MCI's request. Id.

C25. MCI's request for SAG/FAM data to be downloaded to it, in electronic format, and updated as frequently as it is modified by BA-WV, is not unreasonable and should be granted.

C26. The data MCI seeks should properly be considered a network element to which MCI is entitled to have access, if technically feasible. See 47 U.S.C. §§153(29) & 251(c)(3); FCC Interconnection Order, ¶262.

C27. It is the ILEC's burden to prove that a particular access point is not technically feasible. FCC Interconnection Order, ¶198.

C28. The fact that BA-WV may have to exert some effort to develop, download and update the SAG/FAM databases requested by MCI does not make the provision of such data technically infeasible. FCC Interconnection Order, ¶¶198-99, 202.

C29. It is technically feasible for BA-WV to provide MCI with the SAG/FAM information requested.

C30. The underlying goal of TA96 -- encouraging competition for local service -- would be better served by requiring BA-WV to honor MCI's request.

C31. MCI should be required to compensate BA-WV for the information being provided. FCC Interconnection Order, ¶199.

C32. BA-WV should be directed to undertake a study to determine, on a TELRIC basis, its cost to provide and update the SAG/FAM data MCI requests and to provide MCI with a proposal based on that study. MCI may then decide whether it wishes to incur the cost necessary to obtain access to the SAG/FAM data.

C33. The parties are should be directed either to negotiate a cost-study procedure or they may utilize the bona fide request procedure set forth in BA-WV's proposed SGAT, as modified in response to the Commission's May 16, 1997 order. 5/16 Order, at 24-26.

D. Compensation for Internet-Bound Traffic.

F38. MCI believes that Internet-bound traffic that is both originated and terminated within the local calling area is local traffic and, as such, the compensation paid to the carrier of such traffic should be determined using local call termination rates rather than the termination rates for interexchange traffic, with its associated access fees. MCI Initial Br., at 22.

F39. Internet-bound traffic has historically been considered by the

FCC as local traffic for certain regulatory purposes. MTS WATS Market Structure, 97 FCC2d 682 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 (1988).

F40. The FCC recently reaffirmed that ISP calls should not be treated as interexchange access traffic and that ISPs should be considered end-users for purposes of the access charge regime. "First Report and Order," In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (Rel. May 16, 1997), ¶314 (FCC ACR Order).

F41. BA-WV argues that Internet-bound traffic should be analyzed on an end-to-end basis and that, when so analyzed, it is clear that such traffic is overwhelmingly interexchange in character. BA-WV Reply Br., at 13.

F42. The Internet-bound traffic issue is pending before the FCC. See "Order," In the Matter of Association for Local Telecommunications Request for Expedited Letter Clarification Inclusion of Local Calls to ISPs Within Reciprocal Compensation Arrangements, File No. CCB/CPD 97-30 (Rel. July 22, 1997); see also "Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry," In the Matter of Access Charge Reform, et al., CC Docket No. 96-262, et al., FCC 96-488 (Rel. Dec. 24, 1996)(Internet NOI). To-date, a final ruling has not been issued by the FCC in either proceeding.

F43. Staff supports MCI's position and proposes that, except when the user-to-ISP call is a toll call, termination of traffic to ISPs should be treated as local for purposes of determining reciprocal compensation. Walker Reb., at 3-4.

C34. MCI makes the better argument that Internet-bound traffic that originates, and is terminated to an ISP within a local calling area, should be considered "local traffic" for purposes of reciprocal compensation.

C35. Enhanced services -- such as Internet service -- are within the FCC's exclusive jurisdiction. See Computer & Communications Industry Association v. FCC, 698 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

C36. The FCC has previously addressed the issue in a manner favorable to MCI's position, treating calls that originate and are terminated to ISPs in local calling areas as local traffic -- regardless of whether the ISP reformats or retransmits information received over such calls to or from further interstate (or international) destinations. MTS and WATS Market Structure, 97 FCC2d 682, 715 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988); see also Internet NOI, ¶¶282-90.

C37. The fact that the FCC may be reconsidering -- and conceivably may abandon -- its policy that ISP calls originating within local calling areas should be considered local traffic, does not alter the fact that this is the policy currently in effect.

F44. The Commission adopts and incorporates all recitals of fact set

orth herein.

C38. The Commission adopts and incorporates all legal conclusions set forth herein.

**ORDER**

IT IS, THEREFORE, ORDERED that Bell Atlantic - West Virginia, Inc.'s October 30, 1997 motion to dismiss MCI Telecommunications Corp.'s September 19, 1997 petition requesting Commission arbitration of open issues from negotiations between MCI and Bell Atlantic - West Virginia, Inc., as modified by letter filed September 24, 1997, should be, and hereby is, denied.

IT IS FURTHER ORDERED that MCI's petition for arbitration is granted in part, and denied in part, as follows:

(1) MCI's proposed interconnection agreement language regarding the number of points of interconnection it must establish is approved and BA-WV's proposal is denied.

(2) MCI's request for access to BA-WV's directory assistance database, as set forth in its petition and subsequent pleadings, is denied.

(3) MCI's request that SAG/FAM data be downloaded to it, in electronic format, and updated as frequently as it is modified by BA-WV, is approved. MCI shall compensate BA-WV for its costs to initially download, and subsequently update, the requested data. BA-WV shall undertake a study to determine, on a TELRIC basis, its cost to provide and update the SAG/FAM data requested by MCI. The parties shall either negotiate a cost-study procedure or they may utilize the bona fide request procedure set forth in BA-WV's proposed SGAT, as modified in response to the Commission's May 16, 1997 order.

(4) MCI's request that the Commission clarify whether Internet-bound traffic originating in a local calling area and which is terminated within that area to Internet Service Providers (ISPs) is "local" traffic for purposes of reciprocal compensation under TA96 is hereby approved. The Commission clarifies that such Internet-bound traffic is local traffic which is subject to reciprocal compensation arrangements under 47 U.S.C. §252(b)(5). The parties shall bring the FCC's final determination regarding this issue to the Commission's attention as soon as possible to allow the Commission to consider whether any further action is appropriate.

IT IS FURTHER ORDERED that, within forty-five (45) days following issuance of this Order, the parties shall file an executed interconnection agreement for Commission review. The parties may petition the Commission for an extension of time, for good cause, if they are unable to execute an

...nterconnection agreement within this time frame.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

ARC

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A True Copy, Teste:

Sandra Neal

Sandra Neal
Executive Secretary



PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

# Public Service Commission of Wisconsin

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Re: Complaint by Time Warner Communications About Alleged Non-Compliance by Ameritech Wisconsin With the Interconnection Agreement Between Ameritech Wisconsin and Time Warner Communications — 5912-TD-100, 6720-TD-101

Dear Mr. Metropoulos and Mr. Gardon:

At its open meeting on June 16, 1998, the Commission affirmed the staff determination issued on May 5, 1998, in the above captioned proceeding. (A copy of the staff determination is attached.) Ameritech Wisconsin (Ameritech) appealed that staff determination on May 14, 1998.

The Commission determined that the issue before the Commission is the interpretation of the interconnection agreement between Time Warner and Ameritech (negotiated and agreed to by the parties on July 12, 1996, and approved by the Commission by order dated August 27, 1996), a matter over which the Commission has jurisdiction under 47 U.S.C. § 252(e), the Commission's *Interim Procedures for Negotiations, Mediation, Arbitration and Approval of Agreements*, §§ 196.04, 196.219(3)(a), 196.26, 196.28, and 196.30, Stats., and by the terms of the agreement itself. The Commission found that this dispute is a case or controversy which is ripe for a decision now, because the interconnection agreement mandates that the parties are to be aggregating the actual billing record minutes of use during the term of the agreement, and that postponing a Commission decision to await a FCC decision is not in the parties' interest or in the public interest. The Commission determined that calls to an Internet service provider (ISP) are local traffic under the Time Warner/Ameritech interconnection agreement and are subject to the reciprocal compensation provisions of that agreement.

The Commission determined that Ameritech should immediately aggregate the actual billing record minutes of use of local traffic which has been terminated by Time Warner, including traffic which terminates to ISPs on Time Warner's network, since the beginning of the 2–year term of the agreement between the two parties, and that Ameritech shall comply with the calculation procedures established in the pricing schedule of the agreement relating to reciprocal compensation at the appropriate time. If Ameritech is the party with the smaller terminated

traffic amount after the specified calculation, if the imbalance amount exceeds $80,000, and if Ameritech does not pay the entire amount for which it is liable within the time period specified, the Commission determined that Ameritech shall be liable for interest on whatever amount is not paid timely, with interest determined pursuant to the provision of Section 35.5 of the agreement.

Dated at Madison, Wisconsin, June 17, 1998

By the Commission:

for LLD

Lynda L. Dorr
Secretary to the Commission

LLD:GAE:reb:g:\letter orders\pending\Time Warner vs Ameritech

Attachment

cc: RM/MFC
RM/Order
Michael Paulson, Esq.
Yaron Dori, Exq.

See attached Notice of Appeal Rights.

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91